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No. 1025

In the Supreme Court of the United States

OCTOBER TERM, 1961

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
PETITIONER,

v.

ARTHUR J. GOLDBERG, SECRETARY OF LABOR.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 20, Pet. App. 1a) is unreported.[1] The opinion of the court of appeals (Pet. App. 2a–12a) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 12a) was entered on May 11, 1962. The petition for a writ of certiorari was filed on June 8, 1962. The

[1] "R" refers to the joint appendix in the court of appeals, filed as part of the record in this Court. "Pet. App." refers to the appendix to the petition for a writ of certiorari.

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, as a prerequisite to judicial enforcement of a subpoena *duces tecum* issued under the provisions of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 521, the Secretary of Labor must establish probable cause or some similar basis for believing that the Act has been or is about to be violated, or must assert a belief that the Act has been or is about to be violated.

2. Whether the reporting provisions of the Labor-Management Reporting and Disclosure Act of 1959 are unconstitutional as beyond the power of Congress under the Commerce Clause of the Constitution, Article I, Section 8.

3. Whether, where petitioner elected to file a report for the period July 1, 1959, through December 31, 1959, rather than from September 14, 1959, the effective date of the Act, a subpoena *duces tecum* for the underlying records for that period had an authorized purpose and met established standards respecting breadth and relevancy.

STATUTES INVOLVED

The reporting provisions of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 431, 436, and 521, are set forth in the Appendix, *infra*, pp. 8–11.

STATEMENT

This action was instituted by the Secretary of Labor

following petitioner's refusal to comply with a subpoena *duces tecum* issued by the Bureau of Labor-Management Reports of the Department of Labor pursuant to the authority conferred by Section 601 of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter LMRDA), 29 U.S.C. (Supp. I) 521. The background of the action may be summarized as follows:

Section 201 of the LMRDA, *infra*, pp. 8–10, requires all unions subject to the provisions of the Act to file organizational and annual financial reports with the Secretary of Labor. Section 206, *infra*, p. 10, provides that every person required to file these reports shall retain for a period of five years "records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or classified, and checked for accuracy and completeness * * *."

Section 601, *infra*, pp. 10–11, confers authority upon the Secretary "when he believes it necessary in order to determine whether any person has violated or is about to violate" the reporting provisions, "to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto." For this purpose, subsection (b) gives him the same broad subpoena power and sanctions accorded the Federal Trade Commission by Sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49, 50.

Pursuant to Section 201, the petitioner filed in 1959 and 1960 the required reports (R. 16, 17). Although the effective date of the LMRDA was September 14, 1959, the petitioner voluntarily elected to file its first report for the period from July 1, 1959, to December 31, 1959 (R. 18). On May 10, 1961, the subpoena here involved was issued. It identified and called upon petitioner to produce, on May 22, 1961, at petitioner's own office in the District of Columbia, those records which are required by Section 206 of the LMRDA, 29 U.S.C. (Supp. I) 436, to be kept available for five years after the submission of the reports required by the Act (R. 9, 10). The subpoena expressly stated that its issuance was in connection with "an investigation by the Bureau of Labor-Management Reports involving a determination whether any person has violated or is about to violate any provisi of the Labor-Management Reporting and Disclosure Act of 1959" (R. 9).

In a letter dated May 19, 1961, petitioner declined to comply with the subpoena, stating, as one of the grounds for its refusal, that the subpoena could not be validly issued "in the absence of a showing of necessity somewhat akin to a 'probable cause' requirement" (R. 11–12). Following this refusal, the Secretary of Labor on May 26, 1961, pursuant to the provisions of Section 601(b), filed a petition in the district court to compel compliance with the subpoena (R. 4–8). The petition explicitly stated (R. 6, para. V) (emphasis supplied):

> The Secretary, *believing it necessary to determine whether respondent has violated or is*

about to violate Section 201 of the Act, sought through his duly authorized representatives to make an investigation of respondents pursuant to Sections 206 and 601(a) of the Act.

The petition also recited that all of the data sought and referred to in the subpoena were "relevant, material and appropriate to determine whether respondent has violated or is about to violate Section 201 of the Act" (R. 7, para. IX).

Thereafter, the district court, relying principally upon the virtually identical case of *Goldberg* v. *Truck Drivers Local Union No. 299*, 293 F. 2d 807 (C.A. 6), certiorari denied, 368 U.S. 938, ordered compliance with the subpoena (R. 21). On appeal, the district court's decision was affirmed, with one qualification. The court of appeals pointed out that the only differences between the subpoena in the instant case and the subpoenas in *Goldberg* v. *Truck Drivers Local Union No. 299, supra*, were that the subpoena in this case, unlike those in the Sixth Circuit case, required the production of "membership files," and that the instant subpoena called for records for only one half of the year 1959, whereas the subpoenas in the Sixth Circuit case called for records for the entire calendar year 1959 (Pet. App. 3a). With regard to the portion of the district court's order dealing with membership files, the court of appeals remanded for reconsideration. In all other respects, the district court's order requiring compliance with the subpoena was affirmed (Pet. App. 12a).

ARGUMENT

The only significant difference between this case and *Goldberg* v. *Truck Drivers Local Union No. 299*, 293 F. 2d 807 (C.A. 6), in which certiorari was denied, 368 U.S. 938, is that the subpoena here called for "membership files." However, as the court of appeals ordered the district court to reconsider the question whether membership files could be subpoenaed, that issue is not before this Court. Thus, in its present posture, the case is factually the same as *Goldberg* v. *Truck Drivers Local Union No. 299, supra.*[2] The legal issues are identical. All of the contentions advanced in the present petition were made by petitioners in the *Local Union No. 299* case. The answers set forth in the Secretary's brief in opposition in the *Local Union No. 299* case, No. 495, this Term, are equally valid here and establish that the court of appeals was clearly correct in ordering enforcement of those portions of the subpoena which are now before this Court.

[2] The only other difference, as pointed out above, is that the subpoena here sought records from July 1, 1959, whereas the subpoena in *Local Union No. 299* sought records for the entire year 1959. This is because the present petitioner chose to use July 1, 1959, as the beginning of its reporting period for filing the required reports under the Act, whereas the petitioners in *Local Union No. 299* chose to use January 1, 1959, as the beginning of their reporting periods.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied. It is further requested that action be taken on the petition at this Term. By order of May 11, 1962, the court of appeals granted petitioner's application to stay its mandate pending the filing of a petition for certiorari by June 8, 1962. Under Rule 27(c) of that court, the stay will continue in effect until final disposition of the case by this Court. If the petition is not acted on at this Term, the Secretary's execution of his statutory responsibilities under Section 601 of the LMRDA necessarily will be deferred until at least October.

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APPENDIX

Sections 201, 206, and 601 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. (Supp. I) 431, 436, and 521, provide as follows:

Section 201 (29 U.S.C. (Supp. I) 431). *Report of labor organizations.*

(a) *Adoption and filing of constitution and by-laws; contents of report.*

Every labor organization shall adopt a constitution and by laws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information—

(1) The name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this subchapter;

(2) the name and title of each of its officers;

(3) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;

(4) the regular dues or fees or other periodic payments required to remain a member of the reporting labor organization; and

(5) detailed statements, or references to specific provisions of documents filed under this subsection which contain such statements, showing the provision made and procedures followed with respect to each of the following: (A) qualifications for or restrictions on membership, (B) levying of assessments, (C) participation in insurance or other benefit plans, (D) authorization for disbursement of funds

of the labor organization, (E) audit of financial transactions of the labor organization, (F) the calling of regular and special meetings, (G) the selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected, (H) discipline or removal of officers or agents for breaches of their trust, (I) imposition of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, (J) authorization for bargaining demands, (K) ratification of contract terms, (L) authorization for strikes, and (M) issuance of work permits: Any change in the information required by this subsection shall be reported to the Secretary at the time the reporting labor organization files with the Secretary the annual financial report required by subsection (b) of this section.

(b) *Annual financial report; filing; contents.*

Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year—

(1) assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources thereof;

(3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is

affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes thereof;

all in such categories as the Secretary may prescribe.

* * * * *

Section 206 (29 U.S.C. (Supp. I) 436). *Retention of records.*

Every person required to file any report under this subchapter shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or classified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

* * * * *

Section 601 (49 U.S.C. (Supp. I) 521). *Investigations by Secretary; applicability of other laws.*

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an in-

vestigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of section 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

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